

LABOUR DEPARTMENT

The 18th August, 1987

No. 9/3/87-6Lab./6456.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s Remington Rand of India Limited, Sector 6, 20/7, Mathura Road, Faridabad.

IN THE COURT OF SHRI A. S. CHALIA, PRESIDING OFFICER,
LABOUR COURT, FARIDABAD

Reference No. 38 of 1980

between

SHRI M. S. CHAUDHARY, WORKMAN AND THE RESPONDENT, MANAGEMENT OF M/S
REMINGTON RAND OF INDIA LIMITED, SECTOR 6, 20/7, MATHURA ROAD, FARIDABAD

Present—

Shri Manohar Lal, for the workman.

Shri J. S. Saroha, for the respondent management.

AWARD

This reference under section 10(1)(c) of Industrial Disputes Act, 1947 (Act No. 14 of 1947), as amended from time to time and latest by Act No. 49 of 1984 (hereinafter referred as the said Act) was made to this Court by the State of Haryana (Department of Labour),—*vide* its endorsement No. ID/FD/4-80/5658, dated 30th January, 1980, to adjudicate upon the dispute of service matter covered by Second Schedule under section 7 of the said Act, arisen between Shri M. S. Chaudhary, workman and the respondent management of M/s Remington of India Ltd., Plot No. 3, Sector 6, 20/7, Mathura Road, Faridabad. Accordingly it has been registered as Reference No. 38 of 1980.

2. Shri M. S. Chaudhary had been in the service of the respondent as a foreman since July, 1975, drawing Rs. 1,100 per month. He has claimed that he had been discharging his duties to the best of his capacity without any sort of complaint. According to him he was an activist in a trade union and in retaliation a charge-sheet on false, fabricated and frivolous allegations was framed against him which was accordingly answered by him and a fake domestic enquiry was held against him and his services were terminated on 22nd July, 1979. The allegations are that the said order is wrongful, prejudicial and unjustified one since enquiry was merely an eye wash against the principles of natural justice and cannons of jurisprudence. It has been pointed out by him that A. S. Sethi, Enquiry Officer, against him is a Personnel Manager of the respondent and he had pre-conceived and pre-determined to report against him so that he could be sacked. The allegations against him are that he did not record his objections raised during the proceedings of enquiry and he had not even supplied the copies of the proceedings and he was not afforded any opportunity to produce the defence witnesses. According to him the said enquiry is void and illegal and the report submitted is meaningless and no final show-cause notice was issued to him by the management proposing the punishment of dismissal. So far as the nature of duties is concerned, it has been claimed by him that he had absolutely no authority to command and take any decision independently though he was holding the post of foreman and there were hardly any subordinate working under his direct control. He claims that he had been performing his duty with his own hands and giving production and on the face of it he was a workman as defined under section 2(s) of the said Act since he had no supervisory duties. Accordingly request has been made to reinstate him into his job with continuity of service and further with full back wages since it is a clear case of wrecking their vengeance due to his participation in union activities.

3. On notice, respondent management contested the reference and has filed its written statement dated 7th March, 1980. After amendment it has submitted its second written statement dated 1st May, 1985. Its preliminary objection is about maintainability of present reference. According to it Shri Chaudhary was working as a foreman (Tool Room) in the management cadre of organisation. It has been pointed out that he is a diploma-holder in Engineering and he is a graduate also, and further he was already an experienced supervisor and on that basis he was appointed. Further according to it his functions were of a supervisory and managerial in nature as he was required to supervise the job of 20 workers, allot job to them, guide them and certify the correctness of work done by them. Being a foreman he was exercising substantial authority by virtue of his position as a foreman and in that capacity he was enjoying various facilities. So far as his pay is concerned, it has been pointed out that he was drawing Rs. 1,100 per month. In view of the above position it has been contended that he was not a workman as defined under section 2(s) of the said Act and on the face of it there is no industrial dispute in between the parties and the said reference is

beyond the jurisdiction of this Court. Simply on this point dismissal of reference has been requested. So far as charge-sheet is concerned it has been claimed that the same was rightly framed against him and his services have been terminated as per terms and conditions of his appointment letter. The allegations levelled by him against the management have been totally denied. In para 2-A details of charges against him have been mentioned. According to it enquiry officer had afforded all possible opportunities to defend him according to the principles of natural justice. It is being pointed out that he had participated in the enquiry in the beginning but he had later on refused to participate on one pretext or the other and there was no option except to proceed *ex parte* against him. It is asserted that management has lost a confidence in him and on that account his services were terminated and 3 months' notice pay was offered to him. Alternatively it is being claimed that management be allowed to lead evidence in case it is held that domestic enquiry was not fair and proper. Further alternative plea has been taken to the effect that his services have been terminated as per terms and condition of his service and not due to findings of enquiry against him.

4. By way of replication, the workman has repeated his claim as well as allegation also. It has been repeated that he was a workman as defined under the said Act though his designation was of a foreman. It has been emphatically denied that he had to command the working of others as claimed by the management. The allegations against Enquiry Officer have also been repeated.

5. On the pleadings of the parties, Shri I. P. Chaudhary, the then learned Presiding Officer, had framed the following material issues :—

- (i) Whether the workman falls under the categories of the workman of the I. D. Act ?
- (ii) Whether this reference is bad in law ? If so, to what effect ?
- (iii) Whether termination of service of the workman Shri M. S. Chaudhary is proper, justified and in order ?
- (iv) Relief.

6. In support of the pleas the respondent has examined Shri Ajit Singh Sethi, its Personnel Manager and Ashok Kaul, Supervisor and P. N. Chaudhary, Setter. On the other hand M. S. Chaudhary also appeared in support of his claim and allegation also. Virender Singh, Ashok Kumar Verma were also examined by him.

Issue No. I & II were treated as preliminary issue one and the same were decided by Shri H. S. Kaushik, the then learned Presiding Officer—, *vide* his speaking order dated 26th June, 1982. He had come to the conclusion that Shri M. S. Chaudhary was a workman as defined in the said Act and as such reference of his service matter was maintainable in the Labour Court. The case had to proceed further for evidence of the parties on merits. However, respondent had felt aggrieved of the above-mentioned order and had filed Civil Writ Petition No. 3737 of 1982 in the Hon'ble High Court and the impugned order was quashed,— *vide* judgement dated 6th March, 1984. The case was remitted to the Labour Court for fresh decision according to law. It was also directed to record the evidence on all the issues and then to dispose of the case.

7. On receipt of the case file from Hon'ble High Court respondent had applied seeking amendment of its written statement which accordingly was allowed and amended written statement was filed. Replication was also filed. Shri R. N. Singal, my learned predecessor, had recasted the material issues on 29th May, 1985, as follows :—

- (i) Whether claimant is a workman as defined in the I. D. Act ?
- (ii) Whether reference is bad in law ?
- (iii) Whether domestic enquiry is fair and proper ?
- (iv) As per reference ?

8. The management had re-examined Shri Sethi, its Personnel Manager as W-1, Suresh Kumar Gambhir, Auditor, as well as Shri S. S. Negi, Clerk, have also been examined. Shri M.S. Chaudhary, however, has not led any additional evidence and to that effect he had made statement on 7th January, 1986.

9. I have heard at length the parties as presented above. My findings on the material issues are as follows :—

10. Issue No. 1.—It is the important issue in the matter in dispute since respondent has vehemently contended that Shri M. S. Chaudhary was not a workman as defined in the said Act and on the face of it reference made by the Government of Haryana is in the eyes of law a bad one. On the other hand contention is that the concerned person has been only a workman and in that capacity discharging his functions and relief prayed for be accordingly granted to him.

11. Issue No. 1 & 2 :—Both the issues are hereby disposed of together since facts and law involved therein are mixed *inter se*. On behalf of the respondent arguments have been opened by referring to the definition of workman as mentioned in Section 2-S of the said Act. To have first hand knowledge of the said definition it is necessary to reproduce the relevant portion thereof as below :—

“Workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceedings under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of; that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person —

- (i)
- (ii)
- (iii) who is employed mainly in a managerial or administrative capacity ; or
- (iv) who being employed in a supervisory capacity draws wages exceeding one thousand six hundred rupees per mensem or exercise, either by the nature of the duties attached to the office or by reason of power vested in him, functions mainly of a managerial nature.”

12. On the file there is sufficient documentary evidence to determine the matter in controversy. Respondent has relied upon Ex. M-2 application of M. S. Chaudhary present workman for the post of foreman. It is dated 30th June, 1975 and the same has been admitted by the workman. According to the same he is a graduate and further diploma holder in Mechanical Engineering. So far as his experience is concerned, he himself mentioned the same as follows :—

“After passing Diploma I joined American Universal Electric India Ltd., Faridabad as a Trainee in 1969. After getting the training in various departments including purchase, I was appointed Supervisor in Tool Room since then I am working in Tool Room on various positions. Total experience in Tool Room is 6 years.

This include : Supervision on various machines as Jig Boring, Jig Grinding, Milling lathe etc. Supervision on bench with highly skilled Die Maker's.

Scheduling, Planning, Purchasing Tool Room deals directly with the outside parties.

He had submitted his biodata Ex. M-3 for the post of foreman Tool Room. Again its contents have been admitted by the workman about his experience. It was observed :—

“He is smart and knows job well can be considered for appointment. He has long experience in Tool Room Supervisor ever since he started his career. He has been guiding the die makers and machinists under him. He knows the job well. He seems knowledgeable and active for tool room supervisor job. He is experienced and has adequate knowledge above supervisory function. He may be considered for appointment as Tool Room Asstt. Foreman.”

Accordingly he was appointed as a Foreman Tool Room,—*vide* appointment letter Ex. M-1, dated 17th July, 1985. It is also admitted by the workman. His work was found satisfactory and on that basis he was confirmed as a Shift Incharge,—*vide* letter Ex. M-4. Contrary to the above documentary evidence this workman is not in position to have any documentary evidence to rebut the same. From the above it is now quite clear that he was already working as Tool Room Supervisor and had applied for the post of a foreman tool room and he was appointed against the same job.

13. The plea taken by the respondent is that he had been performing managerial and supervisory functions only and simply on that basis can hardly be termed as a workman. So far as his working is concerned, the respondent has categorised the same into groups. His functions according to the respondent were as follows :—

(A) He used to recommend leave application of turners etc. working under his supervision. Ex. M-5 to Ex. M-20 and MW-2/D to MW-2/J are such applications of workers duly recommended by Shri Mahavir Singh Chaudhry.

(B) Attendance cards Ex. M-21. Attendance of one Shri Paryag Dutt there is no such card of Sh. Chaudhry who used to mark presence in register.

(C) Issue of Stores requisitions Ex. M-22 to M-28 have been referred to the effect that the same were authorised by this foreman.

(D) Reports against workers.—In this respect Ex. MW-3/A to MW-4/I have been referred. According to MW-4/I Shri Chaudhary Shift Incharge had called explanation of one Shri Prabhu Nath Chaudhary about the damages of seven segments due to carelessness and gross negligence. Further according to Ex. MW-3/A Shri Chaudhary had found one Shri Chatterji while sitting idle and he had refused to clean the machine.

(E) Recommendation for advances.—MW-3/C has been referred in this respect. According to the same he had recommended the case of one Om Parkash for the grant of Rs. 300 as advance.

(F) Recommendations of appointments.—In this respect Ex. MW-3/A application of one Subhash has been referred to the effect that the same was recommended by Shri Chaudhary. Another application is Ex. MW-3/B since,—*vide* the same he had recommended the application of Shri Dubey for the appointment of Tool and Die maker.

14. To corroborate the above said documentary evidence the respondent has referred to the statement of Shri Ajit Singh Sethi, its Personnel Manager, who has proved the documentary evidence referred above. According to him a foreman in the Tool Room is an officer of Managerial nature. It has also been stated by him that he had a authority for the workmen being immediate supervisor incharge. He has further explained about the supervisory performed by Shri Chaudhary as categorised above. It has also been stated by him that all the documents referred above are bearing the signatures of Shri Chaudhary. Further according to him as a matter of fact he was a Administrative Head of the department and there were about 20/22 workers under him and some of them were even semi-skilled. It has been denied by him that he was not a supervisor. Next witness is Supervisor Shri Ashok Kaul. He has also referred to documentary evidence Ex. M-5 to M-31 and further Ex. M-2/1 to MW-2/4 also about job allocation etc. According to him he was working purely on supervisory post and was not required to do any work. It has been denied by him that as a man of fact that he used to work on machine also. Another supervisor is Shri Uppal MW-3 and he has not been cross examined. According to him a foreman is a officer of the company. Then we have the statement of Setter Shri P.N. Chaudhary. According to him Shri Chaudhary was a foreman in officers category and about 20 workers used to work him and he was required to allocate job, issue gate passes, take disciplinary action against the workers. It is also stated by him that he had also worked under him. Then there is statement of Time Office Incharge Shri Ratra. He is also identifying the signatures of that Chaudhary on numerous documents. The respondent have also re-examined Shri Sethi. Its auditor Gambhir and Clerk Shri Negi. They have also been examined have also stated in details that Shri Chaudhary was working in a Supervisory capacity and he was never a workman. On the other hand there is statement of Shri Chaudhary. According to him he had no subordinates and he never exercised any power. It is stated by him that he used to work with his own hand on the machine and once he had met with an accident also. During the cross-examination it has been admitted by him that he was drawing a monthly salary of Rs. 1,100. It is also admitted that he used to mark his attendance on MW-5/3. It is admitted by him that he was already working as a supervisor in American Universal. It has also been denied by him that he was a supervisor. Virender Singh as well as Ashok Kumar are supporting his version.

15. From the above it emerges that Shri M.S. Chaudhary was already in the service of American Universal as a Supervisor. He is a Graduate and diploma-holder in Mechanical Engineering. On the face of it he would rise for a higher post and obviously to achieve that end he had applied,—*vide* Ex. M-2 and M-3 also and was selected for the post of a foreman Tool Room and later on he was confirmed as a Shift Incharge,—*vide* Ex. M-4. A person of common prudence would consider a foreman and a Shift incharge as an officer and not a worker since such a person is highly paid. There is no dispute that foreman or shift incharge have not been defined in the said Act and as such there status is to be determined keeping in view their functions. Now it has been contended that a foreman is in managerial capacity and he is not a workman at all. Reference has been made to 1982-(2) LLJ Page 155 Ivor Fernandez *versus* Stanes Motors. In that case there was a dispute whether a foreman (Chemicals) is a workman or not. On analysis it was found that he was not a workman since he was covered under Section 2-(s) (iv) of the said Act. This ruling is applicable on the facts of the present case with full force. Further reference has been made of 1980 (40) Indian Factories and Labour Reports page 450 ; Shalimar Tar Products *versus* Labour Court. In that case, there was dispute about the status of a Supervisor Grade I and again on scrutiny it was decided that such a person cannot be termed as a workman and was not entitled for the protection. Reference has also been made to 1976 Labour and Industrial Cases Page 918—Kirkoskar Brothers *versus* Labour Court. In that case there was dispute about the status of a chartered accountant. It was held that he was not a workman. In my opinion this case of accountant is hardly relevant for our purpose. In both the rulings details of nature of duties have been enumerated. On comparison I am of the opinion that duties performed by Shri Chaudhary (as per record) can hardly be differentiated from the duties of a Foreman and supervisor referred in both the cases.

16. As a result of above discussions I have come to the conclusion that Shri M.S. Chaudhary had been in the respondent's employment in a managerial cadre and as such he cannot be termed as a worker as defined in the Act. Such a person is clearly excluded under section 2(s)(iv) of the said Act. He is not entitled for the protection requested for. On the face of it, the State Government was wrong in referring the matter for adjudication and the reference is to be treated as a bad one.

17. I have held that Shri M.S. Chaudhary was not a workman and reference was a bad and as such there is hardly any scope to deal with the enquiry proceedings against him. He can challenge the same by adopting some other available procedure and as such other issues are dropped.

Dated : 27th July, 1987

Endorsement No. 1422, dated 31st July, 1987

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment, Department, Chandigarh as required under section 15 of I.D. Act.

A. S. CHALIA,
Presiding Officer,
Labour Court, Faridabad.

A. S. CHALIA,
Presiding Officer,
Labour Court, Faridabad.

The 1st September, 1987

No. 9/3/87-6-Lab./6957.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the Workman and management of M/s. Super Tax Industries, Plot No. 29, Sector 24, Faridabad.

IN THE COURT OF SHRI A. S. CHALIA, PRESIDING OFFICER, LABOUR COURT, FARIDABAD.

Reference No. 641 of 1985

between

SHRI JAIBIR SINGH, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S SUPER TAX INDUSTRIES, PLOT NO. 29, SECTOR 24, FARIDABAD

Present :

Shri Amar Singh Sharma for the workman.
Shri R. C. Sharma for the respondent-management.

AWARD

This reference under section 10(1) (c) of Industrial Disputes Act, 1947 (Act No. 14 of 1947) as amended from time to time and latest by Act No. 49 of 1984 (hereinafter referred as the said Act) was made to this Court by the State of Haryana (Department of Labour) vide its endorsement No. ID/FD/41232-37, dated 3rd October, 1985 to adjudicate upon the dispute of service matter covered by Second Schedule under Section 7 of the said Act, arisen between Shri Jaibir Singh, workman and the respondent-management of M/s. Super Tax Industries, Plot No. 29, Sector 24, Faridabad. Accordingly it has been registered as reference No. 641 of 1985.

2. Jaibir Singh was appointed by the respondent on 1st March, 1984 as a Machine Operator at monthly wages of Rs. 405. The allegations are that his services were illegally and wrongly terminated on 1st July, 1985. Accordingly request has been made to reinstate him into his job with continuity of service and further with full back wages.

3. On notice, respondent filed written statement. According to it Rubber Chappals are manufactured and due to adverse trade conditions production was stopped on 30th June, 1985. Huge stock was still lying there. Its further claim is that services of all workmen were terminated and notice pay as well as other benefits have been paid to them. So far as Jai Bir Singh is concerned, it has been claimed that the amount of Rs. 607-50 P. was offered to him being one month's notice pay and 15 days wages towards retrenchment compensation, but he has refused to accept the same. On replication, workman repeated his claim as well as allegations also.

4. On the pleadings of the parties, my learned predecessor had framed the following issue on 28th February, 1986 :—

(i) As per reference ?

In support of the respondent's plea, there is statement of its Accountant. Its foreman has also been examined. On the other hand there is statement of Jai Bir Singh. I have heard the parties as represented above.

The findings are as below.

5. Issue No. I.—It has been claimed by Jai Bir Singh that he was appointed by the respondent on 1st March, 1984 as a machine operator at monthly wages of Rs. 405 and his services were terminated on 1st July, 1985. It has not been denied by the respondent,—*vide* its written Statement. Hence his period of service is of more than 240 days and he is entitled to be termed as being in continuous service of the respondent as defined in Section 25-B of the said Act, If it is so then Section 25-F of the said Act are at once attracted. Now it has been stated by the Accountant of the respondent that stock of three lacs chappals was lying in the godown and sale orders were not being received due to rainy season and due to that services of workmen had to be terminated. It has also been stated by him that since then other workers have been taken back by the respondent and similarly this workman can also be taken back but without any continuity of service. This approach of the respondent has made the matter quite easy for the workman to succeed in the case. In case other retrenched workmen have been re-employed then he is also entitled to be so with continuity of service. In my opinion he is entitled for full back wages also as sufficient stock was also lying with the respondent manufactured by this workman and others and as such they must earn out of the profits. He is hereby allowed back wages at the rate of Rs. 405 per month.

The reference is accordingly disposed of.

Dated : 2nd April, 1987

A. S. CHALIA,
Presiding Officer,
Labour Court, Faridabad.

Endorsement No. 744, dated 16th April, 1987

Forwarded (four copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of I.D. Act.

A. S. CHALIA,
Presiding Officer,
Labour Court, Faridabad.

The 24th August, 1987

No. 9/3/87-6Lab./6690.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of presiding Officer, Labour Court, Faridabad in respect of the dispute between the Workman and the management of M/S. The Gurgaon Central Co-operative Bank Ltd., Gurgaon.

IN THE COURT OF SHRI A. S. CHALIA, PRESIDING OFFICER, LABOUR COURT, FARIDABAD.

Reference No. 113 of 1984

between

SHRI GIR RAJ SINGH, WORKMAN C/O SHRI S.K. GOSWAMI, LABOUR LAW ADVISOR,
GURGAON AND THE RESPONDENT MANAGEMENT OF M/S. THE GURGAON CENTRAL
COOPERATIVE BANK LIMITED, GURGAON.

Present :—

Shri S.K. Goswami, for the workman.
Shri M.P. Gupta, for the respondent.

AWARD

This reference under Section 10 (1) (c) of Industrial Disputes Act, 1947 (Act No. 14 of 1947) as amended from time to time and latest by Act No. 49 of 1984 (hereinafter referred as the said Act) was made to this court by the State of Haryana (Department of Labour),—*vide* its endorsement No. ID/GGN/101-83/21271—76, dated 31st May, 1984 to adjudicate upon the dispute of service matter covered by Second Schedule under Section 7 of the said Act, arisen between Shri Gir Raj Singh, workman and the respondent management of M/S. The Gurgaon Central Cooperative Bank Ltd., Gurgaon. Accordingly, it has been registered as reference No. 113 of 1984.

2. Gir Raj Singh was appointed on 25th March, 1975 as a Mini Bank Manager/Secretary and he was drawing Rs. 450 per month and he was dismissed from service on 11th April, 1980. According to him as a matter of fact he was performing clerical duties though officially he was designated as Secretary/Manager. During 1976 he was posted as such in Village Kharouda. It has been alleged by him that record of that Mini Bank had been lost and report was lodged with the police and later on the record had to be re-constructed and on that basis chargesheet dated 21st May, 1978 was served upon him about the mis-appropriation of Bank money. It has been pointed by him that Shri Nihal Singh Inspector was appointed as enquiry officer against him and he had held partial enquiry and had submitted his report dated 8th January, 1979 against him and then he had received show cause notice dated 27th November, 1979 and then he was dismissed from service on 21st March, 1980. It has been alleged by him that entire proceedings against him were void illegal act of vindictiveness and against the principles of natural justice.

On notice, respondent filed written statement preliminary objection has been taken to the effect that present reference is bad-in-law as he was working as a Secretary in supervisory capacity and he is not a workman as defined under the said Act. Further objections that he had filed appeal against the order of dismissal and that was dismissed on 5th August, 1980 and it amounts to *resjudicata*. Alternatively it is being pleaded that respondent be granted an opportunity to lead further evidence in case it is held that there was no proper enquiry against him. So far as the allegations of mis-appropriation of Bank funds are concerned it has been pointed out that he had embezzelled the amount of Rs. 10,619.66 p. and as such he had lost the confidence reposed in him and he is not at all entitled for reinstatement. The procedure adopted by the Enquiry Officer has been fully supported by the respondent and request has been made that reference accordingly be answered against Gir Raj Singh. By way of replication, he has repeated his claim as well as allegations also.

4. On the pleadings of the parties, my learned predecessor had framed the following material issue on 21st September, 1984 :—

(i) Whether the enquiry is fair and proper ?

(ii) As per reference ?

5. On behalf of the respondent Shri Nihal Chand Inspector has been examined who was appointed as an Enquiry Officer against him. Establishment Officer Shri Manohar Lal was also examined. On the other hand Shri Jagdish Chander Moharrir Head Constable has been examined by the workman to prove report No. 4, dated 30th November, 1976. Shiv Chand Clerk Himmat Ram, Accountant have also been examined by him. He has also appeared as WW-4. I have heard the parties and gone through the case file. My findings is as per issue as below :—

6. Issue No. 1.—It is necessary to refer to the numerous documents of enquiry to appropriate the point in dispute. This Gir Raj Singh was working as a Manager, Mini Bank, Khaika Cooperative Credit and Service Society Statement of allegations Ex. M-3 dated 31st May, 1978 was issued against him alleging that he had mis-appropriated the amount of Rs. 10,619.60 p. of the said society. He had submitted his explanation Ex.M-6 and that was not found satisfactory and then,—vide Ex.M-1 Shri Nihal Chnad Inspector was appointed as an Enquiry Officer against him. He had submitted his report Ex.M-4, dated 3rd January, 1979 holding him guilty of mis-appropriating the amount of Rs 8,029.43 Paise. Accordingly show cause notice Ex.M-7 was issued to him and he had submitted his reply Ex M-8 pointing out that he had already deposited the amount of Rs. 8,229.47 Paise. However, he was dismissed from service;—vide Ex.M-9, dated 21st March, 1980. Unfortunately his appeal against the same was dismissed on 5th August, 1980,—vide Ex. M-10 and thereafter demand notice, dated 19th May, 1983 was served by the workman upon the respondent and others.

7. Now it is to be seen as to whether enquiry has been held in proper procedure. To be more clear it is to be seen whether necessary stages have been duly complied with by the enquiry officer. I have gone through the detailed statement of enquiry officer Shri Nihal Chand MW-1. He has explained that he had adopted proper procedure and had afforded reasonable opportunity to the respondent to take part in the proceedings and defend himself. There is hardly any allegation against him except that he is an employee of that department and that can easily be over looked. I have gone through the proceedings of enquiry and have not been able to lay my hand on any illegality committed by the Enquiry Officer. His report dated 3rd January, 1979 Ex.M-4 is a lengthy one. It is based upon evidence. It is not desirable to set aside the said report untill and unless there are very compelling circumstances to do so. This workman has been taking part in the proceedings and simply on the basis of few omission and errors here and there cannot be taken as illegalities in the matter. On the file there are two audit reports Ex.W-2 and W-3 and the same were duly taken into consideration by the respondent. In view of this discussion I held that there was proper and valid enquiry against him.

8. Issue No. 2.—On the basis of enquiry report Shri Gir Raj Singh has been dismissed from service. Initially there was charge against him that he had mis-appropriated the amount of Rs. 10,619.60P but on enquiry it was found that he had actually mis-appropriated the amount of Rs. 8,029.47 P. However against the same he has deposited the amount of Rs. 8,229.47 P. since so is mentioned in Ex.M-8 reply of show cause notice. During the course of argument, it has not been denied. If it so then one is impressed of improved behaviour of this delinquent employee. There is no dispute that record of the society has been lost and matter was reported to the police,—*vide* Ex. W-1 and then record had to be re-constructed on the basis of which chargesheet was framed against him. His conduct now does not amount to impose penalty of dismissal. There are extenuating and redeeming features in his favour. Accordingly I hereby set aside the order of dismissal and take a lenient view as provided in Section 11-A of the said Act. I hereby reinstate him into his job with continuity of service only. He would not be entitled for his back wages since it is he who is responsible for the proper maintenance of account and safe custody of public money.

Dated . 28th July, 1987

A. S. CHALIA,

Presiding Officer,
Labour Court, Faridabad.

Endorsement No. 1463, dated 13th August, 1987

Forwarded (four copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment Department, Chandigarh as required under Section 15 of I.D. Act.

A. S. CHALIA,

Presiding Officer,
Labour Court, Faridabad.

No. 9/3/87-6Lab./6691.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of presiding Officer, Labour Court, Faridabad in respect of the dispute between the Workman and the management of M/S. The Mohindergarh Central Cooperative Bank Ltd., Mohindergarh.

IN THE COURT OF SHRI A. S. CHALIA, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 157 of 1983

between

SHRI NARENDER SINGH S/O RAGHUBIR SINGH, V.P.O. SHAM NAGAR, TEHSIL KOSLI,
DISTRICT ROHTAK AND THE RESPONDENT MANAGEMENT OF M/S. THE MOHINDER-
GARH CENTRAL CO-OPERATIVE BANK LTD., MOHINDERGARH

Present :—

Shri K.L. Sharma, for the workman.

Shri M.P. Gupta, for the respondent.

AWARD

This reference under Section 10(1) (c) of Industrial Disputes Act, 1947 (Act No. 14 of 1947) as amended from time to time and latest by Act No. 49 of 1984 (hereinafter referred as the said Act) was made to this Court by the State of Haryana (Department of Labour) *vide* its endorsement No. ID/GGN/148—82/22522—27, dated 12th May, 1983 to adjudicate upon the dispute of service matter covered by Second Schedule under Section 7 of the said Act, arisen between Shri Narender Singh, workman and the respondent management of M/S. The Mohindergarh Central Co-operative Bank Limited, Mohindergarh. Accordingly, it has been registered as reference No. 157 of 1983.

2. Shri Narender Singh was appointed on 28th September, 1974 as a Secretary and his monthly pay was Rs. 525. During 1974-75 he was working as such in Iota Cooperative and Credit and service Society Limited. The audit of its accounts had revealed that he had mis-appropriated the amount of Rs. 5,537 and was placed under suspension on 13th October, 1977. Chargesheet M-10 dated 15th November, 1977 was issued to him and enquiry officer was appointed on 30th January, 1979 *vide* Ex.M-1. Second chargesheet Ex.M-11, dated 12th September, 1980 was also issued to him alleging that he had mis-appropriated the amount of Rs. 13,306.90 Paise while he remained posted as Secretary of Ratha appointed against him on 14th October, 1980 *vide* Ex.M-7. Both the enquiry officers had held enquiry against

him and had submitted report Ex.M-6 and M-7 holding him guilty to the charges. Accordingly Show-Cause Notice Ex.M-13 was issued to him and he had replied the same,—*vide* Ex. M-12 and then ultimately his service were terminated on 19th October, 1982,—*vide* Ex.M-17. Feeling aggrieved of the same he had served demand notice dated 9th November, 1982 upon the respondent and the dispute in matter was referred to the Labour Court for adjudication.

3. On notice, respondent appeared Narinder Singh had filed his claim statement, dated 8th June, 1984. His grievance is that he was suspended on 13th October, 1977 but he had received intimation after 3 years from enquiry officer to hold an enquiry against him. According to him proceedings were conducted in an dictatorial manner since his verbal and written objections were not entertained, by the Enquiry Officer. It has been alleged by him that *ex parte* enquiry was conducted in a malafide manner with ulterior motive while being in league with the respondent. He has repeated such allegations against the Second Enquiry Officer also. According to him, he has been victimised and a justice has been denied to him and as such he be reinstated into his job with continuity of service and further with full back wages.

4. Written Statement has been filed by the respondent. It has been contended that his services have been terminated after holding proper enquiry and in case that is held otherwise then proper opportunity be granted to the respondent to lead additional evidence to prove the said charges. It is also contended that respondent management had lost faith in Narinder Singh who was in its service as a Secretary and he had misappropriated the fund and on that account he is not entitled for reinstatement. The respondent is fully supporting both the enquiries held against him as being legal, proper and being justified. Further it has been pointed out that Narinder Singh has deposited the amount embezzled by him. It has been pointed out that during the enquiry he had admitted the allegations against him. By way replication Narinder Singh had repeated his claim as well as allegation also.

5. On the pleadings of the parties my learned predecessor had framed the following material issue on 7th September, 1984 :—

(i) As per reference ?

(ii) Whether enquiry is fair and proper ?

6. From the side of respondent's Shri Sat Narain and K.C. Vashist have been examined. Both were enquiry officers against him. 3rd witness is Clerk Shri Azad Singh. On the other hand there is statement of Shri Narinder Singh workman and Attar Singh has also been examined by him. I have heard the parties as represented above. My findings on the said issues are as below :—

7. Issue No. II.—I propose to deal firstly this issue since it is a important one to decide the matter in controversy. Narinder Singh was served with first chargesheet, dated 15th November, 1977 and he had replied the same,—*vide* Ex.M-12. Shri Verma now MW-1 was appointed an Enquiry Officer against him,—*vide* Ex. M-1. Enquiry Report against him is Ex.M-6.

8. Second chargesheet Ex.M-11 was also framed against him and Shri Vishisht now MW-2 was appointed as an Enquiry Officer against him,—*vide* Ex. M-7. He had submitted his report Ex. M-7. The allegations against both the enquiries are that the same were conducted in a very illegal manner and no opportunity was granted to him and as such the same accordingly be rejected forthwith. In support of both the enquiries both the concerned officers have stepped into the witness box and have stated that enquiries were properly conducted and proper opportunity was afforded to Narinder Singh. After going through the record, I am of the opinion that there was hardly any occasion for both the enquiry officers to be partial in the matter since Narinder Singh had himself admitted in his reply about misappropriation of the amount and obviously that had made the matter quite easy for the enquiry officers. It is now not opened for him to retract from his plea. On the file there is written submission Ex. M-14 and receipts Ex.M-15 and M-16 also. In my opinion both the enquiries were properly conducted and hardly any prejudice has been caused the workman. This issue is decided against the workman and in favour of the respondent.

9. Issue No. I.—The respondent management had terminated his services,—*vide* its order dated 19th October, 1982. In my opinion it is the harsh punishment. Against him the allegations were that he had misappropriated the amount of Rs. 19,533.98 Paise and from the very beginning Narinder Singh had been admitting the same and he had even deposited the said amount. It is evident from respondent's Written Statement in which it is clearly mentioned that Narinder Singh has deposited the amount detailed in the Chargesheet. In my opinion it is a redeeming and extenuating in his favour. No loss has been caused to the society since amount due has been deposited by him. As a result of it I hereby invoke Section 11-A of the said Act and revoke the order of termination and reinstate him into his job with continuity of service. However, he would not be entitled for back wages since it is he, who was incharge of the record and due to his negligence the problems had come up. In this manner, he is penalised in a double manner. Obviously it has served the end of justice.

A. S. CHALIA,

Presiding Officer,
Labour Court, Faridabad.

Dated : 29th July, 1987

Endorsement No. 1464, dated the 13th August, 1987

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of I.D. Act.

A.S. CHALIA,

Presiding Officer,
Labour Court, Faridabad.

The 24th August, 1987

No. 9/3/87-6 Lab./6688.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Sarb Industries Engineers and Manufacturers, Plot No. 52, Sector 24, Faridabad :—

IN THE COURT OF SHRI A. S. CHALIA, PRESIDING OFFICER, LABOUR COURT,
FARIDABAD

Reference No. 739 of 1985

between

SHRI ISSAC DANIEL, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S
SARB INDUSTRIES ENGINEERS AND MANUFACTURERS, PLOT NO. 52,
SECTOR 24, FARIDABAD

Present :

Shri Darshan Singh, for the workman.

Shri H. R. Dua, for the respondent-management.

AWARD

This reference under section 10 (1)(c) of Industrial Disputes Act, 1947 (Act No. 14 of 1947) as amended from time to time and latest by Act No. 49 of 1984 (hereinafter referred as the said Act) was made to this Court by the State of Haryana (Department of Labour),—*vide* its endorsement No. ID/FD/200-85/47434—38; dated 21st November, 1985 to adjudicate upon the dispute of service matter covered by Second Schedule under Section 7 of the said Act, arisen between Shri Issac Daniel, workman and the respondent-management of M/s. Sarb Industries, Engineers and Manufacturers, Plot No. 52, Sector 24, Faridabad. Accordingly, it has been registered as reference No. 739 of 1985.

2. Shri Issac Daniel was in the employment of respondent as a Planner since 11th March, 1983 @ Rs. 700 per month. He had fell sick on 15th June, 1985 and was getting treatment in ESI Hospital and about the same he had submitted medical certificate to the respondent. He had gone to the factory on 3rd July, 1985 to resume his duty but he was not allowed to do so. On the other hand it was alleged by the respondent that he had started remaining absent with effect from 13th June, 1985. His grievance is that order of termination is illegal, arbitrary and against the principles of natural justice. It has also been alleged by him that he has been victimised due to his union activities. Accordingly request has been made to reinstate him into his job with continuity of service and further with full back wages.

3. On notice, respondent has filed written statement contesting the said claim. It has been contended that his services were never terminated. It has been alleged that he had started remaining absent with effect from 13th June, 1985, and re-call notice, dated 18th June, 1985 and 24th June, 1985 were issued to him to join the duty but he had not turned up. Offer has been made to reinstate him but without back wages. Further allegations are that he has been a habitual absentee and has been causing wrongful loss to the respondent. By way of rejoinder, workman has repeated his claim as well as his allegations.

4. On the pleadings of the parties my learned predecessor had framed the following material issue on 11th February, 1986 :—

- (i) Whether reference is not maintainable ?
- (ii) As per reference ?

5. In support of the case respondent's partner Shri Surinder Singh has appeared. On the other hand, workman has also appeared. I have heard the parties as represented above. My findings on the said issues are as below :—

Issue No. 1 :

6. During the course of arguments it has been brought to my notice by respondent's representative that factory has since been closed on 7th October, 1986 and as such this workman has no case of reinstatement and his reference has since become infructuous. On the file, there is application, dated 6th November, 1986. In support of the same general notice, dated 7th October, 1986 has also been produced. According to the same all the workers have been retrenched and benefit of section 25-F of the said Act are available to them. It has not been specifically denied by the workman. In the given circumstances of the case the fate of workman has been effected. According to the stand of the respondent his name was still on the roll of the factory and he was not retrenched as alleged. On persuasion it has been admitted on behalf of the workman that factory has since been closed and he is ready to have retrenchment compensation. Reference is accordingly disposed of to the effect that factory has since been closed and retrenchment benefit accordingly be paid to this worker. The matter is accordingly disposed of.

Dated the 29th July, 1987.

A. S. CHALIA,

Presiding Officer,
Labour Court, Faridabad.

Endorsement No. 1461, dated the 13th August, 1987.

Forwarded (four copies), to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act.

A. S. CHALIA,

Presiding Officer,
Labour Court, Faridabad.

The 8th September, 1987

No. 9/4/87- 6Lab./6971.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. Koma Engineers, Jaipur Road, Gurgaon.

BEFORE SHRI S. B. AHUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 100/1983

between

THE MANAGEMENT OF M/S KAMA ENGINEERS, JAIPUR ROAD, GURGAON AND ITS WORKMEN

Present :

Shri M. P. Gupta, A. R. for the Management.

None for the workmen.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the management of M/s. Koma Engineers, Jaipur Road, Gurgaon and its workmen to this Tribunal for adjudication :—

Whether the workmen are entitled to grant of Bonus @ 20% for the year 1981-82
If so, with what details ?

2. On notices being given, the parties appeared and filed their pleadings.

3. Lateron neither the workmen nor their authorised representatives appeared and as such *ex parte* proceedings were ordered against the workmen. It appears that the workmen are not interested in pursuing this reference. Hence the reference is dismissed for non-prosecution by the workmen. The award is passed accordingly.

Dated the 12th August, 1987.

S. B. AHUJA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 1083, dated the 25th August, 1987.

Forwarded (four copies), to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

S. B. AHUJA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/4/87-6Lab./6972.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Eicher Good-earth Limited, Plot No. 59, Industrial Area, Faridabad.

BEFORE SHRI S. B. AHUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Complaint No. 26/1986

between

SHRI GOPAL DASS C/O SHRI K. L. SHARMA, VICE-PRESIDENT, HARYANA INTUC
G-15, OLD PRESS COLONY, FARIDABAD, AND THE MANAGEMENT OF M/S.
EICHER GOOD EARTH LIMITED, PLOT NO. 59, INDUSTRIAL AREA,

FARIDABAD.

Present :

Shri Gopal Dass, Complainant alongwith Shri K. L. Sharma., A. R.

Shri Deepak Brara, A.R., for the Management.

AWARD

This is a complaint under Section 33-A of the Industrial Disputes Act, 1947. The complainant has alleged that his services were terminated by way of retirement on 23rd June, 1986 during the pendency of general reference pertaining to general demands of the workmen. He alleged that the respondent has thus contravened the provisions of Section 33 of the Industrial Disputes Act, 1947 and prayed for reinstatement with all back wages.

2. On notices being given, the opposite party appeared and contested the complaint. Now the complainant and his authorised representative have made a statement to withdraw the complaint. The statement of the parties have been reduced into writing to this effect.

3. In view of the statement made by the complainant, this complaint is hereby dismissed as withdrawn. It is made clear that this order shall not effect the rights of the complainant in any manner which are yet to be determined in reference No 8/1987.

Dated, the 17th August, 1987.

S. B. AHUJA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 1088, dated the 27th August, 1987.

Forwarded (four copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

S. B. AHUJA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No 9/4/87-6Lab./6973.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Nagsons Brushware Mfrs., Industrial Estate, Mehrauli Road, Gurgaon.

BEFORE SHRI S. B. AHUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 72/1987

between

SHRI JAGDISH C/O SHRI MAHAVIR TYAGI, INTUC, UNION DELHI ROAD,
GURGAON AND THE MANAGEMENT OF M/S. NAGSONS BRUSHWARE
MFRS., INDUSTRIAL ESTATE, MEHRAULI ROAD, GURGAON.

Present:

Shri Mahavir Tyagi, A. R. for the workman.
Shri N. P. Gupta, A. R. for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Jagdish workman and the Management of M/s Nagsons Brushware Mfrs., Plot No. 100, Industrial Estate, Mehrauli Road, Gurgaon, to this Tribunal for adjudication:—

Whether the termination of services of Shri Jagdish is justified and in order? If not to what relief is he entitled?

2. On notices being given, the parties appeared.

3. The parties settled the dispute. The workman had received a sum of Rs. 500 in full and final settlement of his claim and had relinquished his rights of reinstatement. Ex. S-1 is the copy of settlement and Ex. S-2 is the copy of receipt which are admitted to be correct by the authorised representatives of the parties. The statement of authorised representatives of the parties has been reduced into Writing.

4. In view of the settlement, no point survives for adjudication. The award is passed accordingly.

Dated the 12th August, 1987.

S. B. AHUJA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 1085, dated 27th August, 1987.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

S. B. AHUJA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.